

2005 BCSECCOM 263

April 15, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - An issuer wants to complete a take over bid that meets some, but not all of the conditions set out in s. 98 (1)(e) of the Act required for an exempt take over bid - The bid is being done in compliance with US and Dutch law; the Netherlands does not require an issuer to maintain a share register; the number of the issuer's shareholders in B.C. is believed to be de minimis relative to the number of shareholders worldwide; however, the number of beneficial shareholders in B.C. is known to exceed 50; the bid will satisfy all other conditions required for an exempt take over bid

Securities Act s. 76 - Exemption from s. 61 requirement to file a prospectus in connection with a distribution - An issuer wants to distribute securities using an offering document other than a long form prospectus - The Applicant has made a share exchange take over bid; the bid is being done in accordance with U.S. and Dutch laws; in connection with the bid, the Applicant will send to British Columbia security holders any materials relating to the offer that are sent to U.S. security holders; the Applicant cannot rely on the exemption in section 74(2)(26) of the Act to distribute securities under the bid because the materials may not be filed

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61, 76, 105-110, and 114(2)

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova
Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador
(the "Jurisdictions")

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Royal Dutch Shell plc
(the "Filer")

2005 BCSECCOM 263

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the following requirements shall not apply to trades made in connection with the proposed offer (the “Royal Dutch Offer”) by the Filer for the outstanding ordinary shares (the “Royal Dutch Shares”) of N.V. Koninklijke Nederlandsche Petroleum Maatschappij (Royal Dutch Petroleum Company) (“Royal Dutch”): (i) the formal take-over bid requirements contained in the Legislation, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors’ circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Take-over Bid Requirements”); (ii) the dealer registration requirements in the Legislation of Ontario, Québec and Prince Edward Island in respect of the issue by the Filer of ‘A’ Shares and ‘A’ ADRs; and (iii) the prospectus requirements in the Legislation of British Columbia, Ontario, Québec and Prince Edward Island (the “Prospectus Requirements”) in respect of the issue by the Filer of ‘A’ Shares and ‘A’ ADRs.

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a public limited company incorporated under the laws of England and Wales.

2005 BCSECCOM 263

2. The Filer's registered office is located at Shell Centre, London, SE1 7NA, UK and its headquarters are at Carel van Bylandtlaan 30, 2596 HR The Hague, The Netherlands.
3. The Filer is not a reporting issuer or the equivalent in any of the Jurisdictions. The Filer's securities are not listed or quoted for trading on any Canadian stock exchange or market.
4. On October 28, 2004, the Royal Dutch Boards and the Board of Shell Transport announced that they had unanimously agreed to propose to their shareholders the unification of Royal Dutch and The "Shell" Transport and Trading Company, public limited company ("Shell Transport") under a single parent company, Royal Dutch Shell plc. The Filer will have 'A' and 'B' shares. Royal Dutch shareholders will be offered 'A' Shares (including in the form of 'A' ADRs for holders of Royal Dutch New York Shares) and Shell Transport ordinary shareholders and holders of Shell Transport bearer warrants will be offered 'B' Shares. Holders of Shell Transport ADRs will be offered 'B' ADRs. The 'A' Shares and the 'B' Shares will have identical rights except that it is intended that holders of 'A' Shares and 'A' ADRs will receive dividends having a Dutch source for tax purposes and it is intended that holders of 'B' Shares and 'B' ADRs will receive dividends that have a UK source for tax purposes. These proposals will be implemented through (i) a public exchange offer by the Filer for the Royal Dutch Shares, and (ii) the acquisition of Shell Transport by the Filer pursuant to a Scheme of Arrangement of Shell Transport (the "Scheme of Arrangement") under section 425 of the *Companies Act of England and Wales 1985, as amended* (collectively, the "Transaction"). Royal Dutch currently owns 60% of the Royal Dutch/Shell Group of Companies (which is described further below) and Shell Transport owns 40%, and the exchange ratios in the Transaction will be set to give effect to this ownership of the economic interest in the Royal Dutch/Shell Group of Companies.
5. Royal Dutch is a corporation incorporated under the laws of The Netherlands, with its shares currently listed on the Euronext Amsterdam, Euronext Paris, London Stock Exchange, New York Stock Exchange, Vienna Stock Exchange, Frankfurt Stock Exchange, Berlin-Bremen Stock Exchange, Munich Stock Exchange, Dusseldorf Stock Exchange, Hamburg Stock Exchange and SWX Swiss Exchange. On October 28, 2004, Royal Dutch announced its intention to delist from Euronext Brussels, Euronext Paris, Luxembourg Stock Exchange, Frankfurt Stock Exchange, Berlin-Bremen Stock Exchange, Munich Stock Exchange, Dusseldorf Stock Exchange, Hamburg Stock Exchange and SWX Swiss Exchange. The Royal Dutch Shares have been delisted from the Luxembourg Stock Exchange (effective February 1, 2005)

2005 BCSECCOM 263

and delisting has been confirmed by Euronext Brussels (effective March 1, 2005) and the SWX Swiss Exchange (effective March 17, 2005). For the other exchanges where delisting is intended, efforts are underway to ensure an efficient delisting process.

6. The Filer intends to apply for its “A” and “B” shares to be listed and admitted to trading on the London Stock Exchange and Euronext Amsterdam and to apply for its “A” and “B” ADRs to be listed and admitted to trading on the New York Stock Exchange.
7. Royal Dutch is a holding company which, in conjunction with Shell Transport, owns, directly or indirectly, investments in the numerous companies known collectively as the Royal Dutch/Shell Group of Companies. Royal Dutch’s sole activity is the ownership of a 60% interest in the Royal Dutch/Shell Group of Companies, of which it is not a part and in whose activities it does not engage. The companies that comprise the Royal Dutch/Shell Group of Companies are engaged in numerous business lines, including Exploration and Production, Gas & Power, Oil Products, Chemicals, and other industry segments including Renewables, Shell Consumer and Shell Hydrogen.
8. Royal Dutch’s registered office is at Carel van Bylandtlaan 30, 2596 HR The Hague, The Netherlands.
9. Royal Dutch’s issued and outstanding share capital as at January 31, 2005 consisted of 2,074,400,000 ordinary shares (excluding ordinary shares held by Royal Dutch, which have been repurchased and are awaiting approval for cancellation at the next annual general meeting of Royal Dutch) (the “Royal Dutch Shares”). The Royal Dutch Shares constitute “equity securities” for the purposes of the definition of “take-over bid” in the Legislation of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia and Newfoundland and Labrador.
10. Royal Dutch is not a reporting issuer or equivalent in any of the Jurisdictions. Royal Dutch’s securities are not listed or quoted for trading on any Canadian stock exchange or market.
11. The Filer currently holds none of the outstanding Royal Dutch Shares and has no rights to purchase any of the outstanding Royal Dutch Shares.
12. The Royal Dutch Offer is being made, and the Dutch offer document, listing particulars and a U.S. offer document (collectively, the “Royal Dutch Offer Documents”) reflecting the terms of the Royal Dutch Offer is being prepared, in accordance with the laws of (i) The Netherlands and, in particular, in

2005 BCSECCOM 263

compliance with the Dutch *1995 Act on the supervision of the securities trade*, and the Dutch *1995 Decree on the supervision of the securities trade*, each as amended; and (ii) the federal securities laws of the United States.

13. Drafts of the Dutch offer document have been submitted to the Dutch regulator, The Netherlands Authority for the Financial Markets (“AFM”), for review on December 10, 2004 and February 28, 2005. Further drafts are planned to be submitted to the AFM prior to receipt of final approval, which is currently expected to be granted in May 2005. The first draft of the listing particulars was submitted to the relevant listing authorities on February 28, 2005 and it is expected that the listing particulars will be approved by such authorities in May 2005. In accordance with Dutch law and practice, the Royal Dutch Offer Documents will be available on the Internet under www.euronext.com (for Dutch residents) and www.shell.com, and a public announcement in a daily national Dutch newspaper, the daily official list of Euronext Amsterdam N.V. and daily national newspapers in other jurisdictions to which the Royal Dutch Offer is extended (where required) will specify where and how the shareholders may obtain a copy of the Royal Dutch Offer Documents free of charge.
14. Drafts of the U.S. offer document (the “F-4”) were submitted to the U.S. securities regulator, the Securities and Exchange Commission (the “SEC”), on December 10, 2004, January 27, 2005 and March 11, 2005, respectively. It is expected that the U.S. Prospectus which forms part of the F-4 will also be approved by the SEC in May 2005. In accordance with U.S. law and practice, the F-4 will be available on the Internet under www.sec.gov. The F-4 will be able to be downloaded from the Filer’s website under www.shell.com and will be posted to U.S. holders of Royal Dutch Shares and holders of Royal Dutch Shares registered on the New York Register, where their addresses are known to the Filer.
15. The Scheme of Arrangement will be subject to English law and subject to the approval of the High Court of Justice in England and Wales and applicable securityholder approvals at a Court meeting and at an extraordinary general meeting to be convened by Shell Transport. The Scheme of Arrangement is subject to disclosure requirements under applicable English law, including the preparation of a circular which is being disseminated to securityholders of Shell Transport.
16. As permitted by Dutch law, Royal Dutch has issued ordinary shares in bearer form as well as registered form. As at December 31, 2004 the majority of the Royal Dutch Shares (approximately 75%) were held in bearer form. Due to the form in which these shares are held, the Filer is not able to ascertain, with

2005 BCSECCOM 263

any degree of certainty, the country of residency of the majority of the shareholders of Royal Dutch.

17. Based on an active shareholder survey of only institutional investors in November 2004 (which covered approximately 70% of the shareholder base), the Filer estimates that no more than approximately 1.3% of the Royal Dutch Shares (only Royal Dutch Shares in bearer form) are held by institutions located in Canada. The Filer is unable to definitively confirm the accuracy of the shareholder survey or provide such information broken down by province.

18. An investigation of the Hague Register of Royal Dutch carried out in January 2005 showed that, as at January 19, 2005, there were seven holders of Royal Dutch Shares resident in Canada, holding 13,647 Royal Dutch Shares representing approximately 0.0007% of the total Royal Dutch Shares. An investigation of beneficial holders (other than those beneficial holders who have indicated that they do not wish to receive reports from Royal Dutch) carried out in February 2005 of the New York Register of Royal Dutch Shares (which represents approximately 25% of the Royal Dutch Shares) showed that, as at February 9, 2005, there were 7,509 beneficial holders of Royal Dutch Shares resident in Canada, holding 4,943,786 Royal Dutch Shares representing approximately 0.24% of the total Royal Dutch Shares. The following sets out the provinces in which the Filer believes these shareholders were residing:

Province	New York Register (beneficial holders)	Hague Register	Total
Alberta	828	1	829
British Columbia	1,002	1	1,003
Manitoba	106	0	106
Newfoundland	33	0	33
New Brunswick	44	0	44
Northwest Territories	7	0	7
Nova Scotia	111	0	111
Ontario	3,784	5	3,789
Prince Edward Island	36	0	36
Québec	1,440	0	1,440
Saskatchewan	106	0	106
Yukon Territory	2	0	2
Unknown Canadian	10	0	10
Total	7,509	7	7,516

2005 BCSECCOM 263

19. If any material relating to the Royal Dutch Offer is sent by the Filer or its exchange agent to a holder of Royal Dutch Shares registered on the Hague Register residing in The Netherlands, such material (which will be in English or an English translation will be provided) will also be sent to any holder of Royal Dutch Shares registered on the Hague Register residing in the Jurisdictions (if addresses are known), and will be concurrently filed with the Decision Makers. If any material relating to the Royal Dutch Offer is sent by the Filer or its exchange agent to a holder of Royal Dutch Shares registered on the New York Register residing in The Netherlands, such material (which will be in English or an English translation will be provided) will also be sent to any holder of Royal Dutch Shares registered on the New York Register residing in the Jurisdictions (if addresses are known), and will be concurrently filed with the Decision Makers. Should a holder of Royal Dutch Shares in bearer form residing in the Jurisdictions request material relating to the Royal Dutch Offer, such material (which will be English or an English translation will be provided) will be concurrently filed with the Decision Makers and will be the same as the material sent to a holder of Royal Dutch Shares in bearer form residing in The Netherlands who requests such material. Any materials sent to holders of Royal Dutch Shares in Quebec will be accompanied by a copy of the French public announcement described below.
20. A public announcement in English in a national Canadian newspaper and in French in a newspaper that is widely circulated within Quebec, made at the same time as the public announcement in a daily national Dutch newspaper or as soon as practicable after receipt of the order requested hereby, will specify where and how all Canadian shareholders may obtain a copy of the Royal Dutch Offer Documents. This will include a toll-free phone number, which will be established to permit shareholders of Royal Dutch who are resident in Canada to call to request a copy of the Royal Dutch Offer Documents free of charge.
21. All of the holders of the Royal Dutch Shares to whom the Royal Dutch Offer is made will be treated equally.
22. An exemption from the Registration Requirements is not available in Québec and Prince Edward Island for trades made in connection with the Royal Dutch Offer.
23. An exemption from the Prospectus Requirements is not available in British Columbia, Québec and Prince Edward Island for trades made in connection with the Royal Dutch Offer.

2005 BCSECCOM 263

24. If the requested relief is not granted, holders of the Royal Dutch Shares resident in the Jurisdictions will not have the opportunity to participate in the Royal Dutch Offer.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Legislation is that:

- A. the Filer is exempt from the Take-over Bid Requirements in making the Royal Dutch Offer to the holders of Royal Dutch Shares or ADRs who are resident in the Jurisdictions, provided that:
 - (i) the Royal Dutch Offer and all amendments to the Royal Dutch Offer are made in compliance with the laws of The Netherlands and the federal securities laws of the United States, and
 - (ii) any material relating to the Royal Dutch Offer that is sent to the holders of the Royal Dutch Shares in The Netherlands (which will be in English or an English translation will be provided) will be sent to the holders of the Royal Dutch Shares resident in the Jurisdictions whose addresses are known to the Filer and copies thereof filed with the Decision Maker in each Jurisdiction;
- B. the Registration Requirements shall not apply to trades made in connection with the Royal Dutch Offer; and
- C. the Prospectus Requirements shall not apply to trades made in connection with the Royal Dutch Offer provided that the first trade in shares and ADRs issued by the Filer in connection with the Royal Dutch Offer shall be a distribution or primary distribution to the public unless, in all the Jurisdictions other than Québec, the conditions of subsection (1) of section 2.14 of Multilateral Instrument 45-102 are satisfied, and in Québec, the alienation (first trade) of the shares and ADRs issued by the Filer in connection with the Royal Dutch Offer are executed through the facilities of an exchange or market outside Canada.

Paul M. Moore
Ontario Securities Commission

Wendell S. Wigle
Ontario Securities Commission